

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2005-CA-00409-COA**

**PATRICK DEJEAN**

**APPELLANT**

**v.**

**HEYWOOD DEJEAN, CHRISTINE DEJEAN AND  
HANCOCK BANK**

**APPELLEES**

DATE OF JUDGMENT:	2/7/2005
TRIAL JUDGE:	HON. JAYE A. BRADLEY
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	ELLIOT G. MESTAYER
ATTORNEYS FOR APPELLEES:	W. LEE WATT THOMAS E. ROBERTSON CHRISTOPHER RAY FONTAN
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS, AND ESTATES
TRIAL COURT DISPOSITION:	CHANCERY COURT AWARDED A CERTIFICATE OF DEPOSIT TO APPELLEES.
DISPOSITION:	AFFIRMED - 10/30/2007
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**EN BANC.**

**MYERS, P.J., FOR THE COURT:**

¶1. Julia Mae DeJean and her brother, Patrick DeJean, jointly owned a non-negotiable Hancock Bank certificate of deposit (CD No. 16314), with rights of survivorship. CD No. 16314 was stamped “non-negotiable, non-transferable” and was payable “upon presentation of this certificate properly endorsed.” On or about January 18, 2001, Julia Mae spoke with a teller at Hancock Bank and instructed Hancock Bank to redeem CD No. 16314 and with the proceeds, reissue a new CD (CD No. 17178) in the name of herself or her sister-in-law, Christine DeJean, and her nephew, Heywood DeJean. However, during the redemption process, Julia Mae learned that the old CD was due for an interest accrual to occur on January 23, 2001, and that designating an effective date of redemption

prior to this accrual would result in a loss of an unspecified amount of interest. At the request of Julia Mae, the issuing of the new CD was delayed by Hancock Bank until January 23, 2001, for the sake of avoiding interest penalties and maximizing the interest accrual. The old CD, No. 16314, remained in the possession of Hancock Bank until the new CD, No. 17178, was issued on January 23, 2001, to “Julia Mae DeJean or Christine DeJean and Heywood DeJean.” In the meantime, after Julia Mae ordered the issuance of the new CD, but before the new CD was issued, Julia Mae died on January 20, 2001.

¶2. Following Julia Mae’s death, Patrick DeJean petitioned for a declaratory judgment in which he sought to be declared the sole owner of a certain certificate of deposit (CD) held at Hancock Bank. In his petition, Patrick asserted, amongst several arguments that are not at issue in this appeal, that Hancock Bank was in breach of contract for redeeming the CD without a proper endorsement. Patrick sought the return of the funds transferred into the new CD, owned by Christine and Heywood. The matter went to trial in the Chancery Court of Jackson County on October 18, 2004, and a judgment was entered in favor of Christine and Heywood, as well as Hancock Bank. The chancellor found, pursuant to Julia Mae’s post-dating instructions and agreement with Hancock Bank, that the CD had been properly redeemed prior to Julia Mae DeJean’s death and awarded the proceeds of the CD to Christine and Heywood.

¶3. The chancellor specifically found that no endorsement was required for Julia Mae to transfer the CD because it was a non-negotiable instrument and that Julia Mae could unilaterally order the redemption of the CD without endorsement, despite the language appearing on the face of the CD purportedly requiring endorsement. On appeal, Patrick argues the chancellor erred in (1) finding that the CD was redeemed before Julia Mae’s death, (2) applying an erroneous legal standard in holding that a CD can be partially redeemed, (3) neglecting to apply the “four corners” doctrine to

the CD, (4) failing to apply Mississippi Code Annotated section 81-5-63 (Rev. 2001), (5) failing to grant an equitable division of the CD, and (6) finding that the CD was sufficiently “endorsed.” Christine, Heywood and Hancock Bank argue that Patrick failed to raise issues concerning the timing of the redemption of the CD at trial and thus this issue is procedurally barred on appeal. Further, Christine, Heywood and Hancock Bank contend that no endorsement was required because the CD was a non-negotiable instrument. Finding no error, we affirm the decision of the chancellor.

### STANDARD OF REVIEW

¶4. “The findings of a chancellor will not be disturbed when supported by substantial evidence unless there was manifest error or an improper legal standard was applied.” *In re Estate of Temple*, 780 So. 2d 639, 642 (¶15) (Miss. 2001). However, we review questions of law *de novo*. *Ladner v. Necaise*, 771 So. 2d 353, 355 (¶3) (Miss. 2000).

### DISCUSSION

#### I. WHETHER THE CHANCELLOR COMMITTED MANIFEST ERROR IN FINDING THAT CERTIFICATE OF DEPOSIT NO. 16314 WAS REDEEMED PRIOR TO JULIA MAE DEJEAN’S DEATH

¶5. Patrick raises the issue of the timing of the redemption of the original CD in his first argument on appeal. Essentially, Patrick asserts that Julia Mae did not withdraw the proceeds of the old CD prior to her death and argues that because redemption did not occur before her death, he possesses the right of survivorship to the CD. Christine, Heywood and Hancock Bank argue that Patrick brings the issue regarding the timing of the redemption for the first time on appeal and, thus, is procedurally barred from asserting this error, as the matter was never litigated in the court below. *See Bender v. North Meridian Mobile Home Park*, 636 So. 2d 385, 389 (Miss. 1994). As the focal point of Patrick’s case in the court below centered upon whether the original CD was properly redeemed before Julia Mae’s death, we do not find that Patrick is procedurally barred; however,

Patrick's claim fails on the merits.

¶6. While the CD was, in this case, made *non-negotiable* by placement of a legend on its face reading, "non-negotiable," and it is recognized that the provisions of the Uniform Commercial Code (UCC) do not apply, its passages are, nevertheless, persuasive support for the chancellor's decision regarding the issuance of the new CD.<sup>1</sup> The UCC, as adopted by Mississippi Code Annotated, provides that postdating a *negotiable* instrument is, statutorily, an accepted practice. *See* Miss. Code Ann. § 75-3-113 (a) (providing, specifically, that "[a]n instrument may be antedated or postdated"). The statute provides that when postdating occurs, the date merely determines the time of payment, if the instrument is payable at a fixed period after that date. The date of the instrument's issuance is not affected. The argument regarding a non-negotiable instrument then follows: If a negotiable instrument may be properly postdated, then what prohibits the postdating of a non-negotiable instrument? Julia Mae instructed Hancock Bank on or about January 18, 2001, to postdate the redemption of the old CD and to create the new CD on January 23, 2001. The postdating of the issuance of the new CD until January 23, 2001 did not affect the date of issuance of January 18, 2001. The chancellor found that the foregoing practice was an acceptable process of redemption, and we agree. Thus, Hancock Bank's payment of the proceeds of the reissued CD, No. 17178, to Christine and Heywood was proper.<sup>2</sup> Accordingly, we find no error and the decision of the

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<sup>1</sup> UCC Article 3 does not apply to a non-negotiable instrument. Miss. Code Ann. § 75-3-102(a) (Rev. 2000). Thus, the redemption of the CD is governed by rules other than those contained in Article 3, namely contract law. *Id.*; Miss. Code Ann. § 75-3-104(d) (Rev. 2002).

<sup>2</sup> We note that the dissent suggests that the reissuing of the new CD in the name of Julia Mae or Christine and Heywood is prohibited by the nuncupative will statute of Mississippi Code Annotated section 91-5-15 (Rev. 2004). Mississippi Code Annotated section 91-5-15 prohibits a decedent's oral devise of property made during extremis, at least so near death that he did not have reasonable time and opportunity to make written will, without a requisite number of witnesses present. Julia Mae, in ordering the reissuance of the new CD, retained joint ownership with Christine and Heywood, rather than completely divested her ownership of the CD to Christine and Heywood. Thus, the reissuance of the CD cannot be considered a testamentary devise as

chancellor is affirmed.

**II. WHETHER THE CHANCELLOR APPLIED AN ERRONEOUS LEGAL STANDARD IN HOLDING THAT, IN EFFECT, A CERTIFICATE OF DEPOSIT COULD BE PARTIALLY REDEEMED**

¶7. Patrick contends that the chancellor relied upon an erroneous legal standard in deciding that Julia Mae redeemed the original CD on January 18, 2001. Similar to his previous issue, Patrick argues that the chancellor incorrectly found that the old CD was properly redeemed on January 18, 2001, because this finding created a lapse of time before the issuance of the subsequently issued CD No. 17178 on January 23, 2001. The argument progresses that the lapse of time between the alleged redemption date and the date of the new issuance created a period of three to four business days that accrued interest, for which is unaccounted. He asserts, therefore, that because of this lapse of interest, the CD was only partially redeemed and seeks reversal based upon the chancellor's use of an erroneous legal standard. However, we note that Patrick fails to provide this Court with any citations to case law providing the legal standard that he argues should have been employed.

¶8. The chancellor found that the redemption of the original CD and the issuance of the new CD were two separate and distinct transactions. The entire face value and the accompanying accrued interest were transferred from the original CD to the new CD when the redemption and new issuance transpired. We cannot find any support in the record or applicable case law to support Patrick's contention that the chancellor allowed the original CD to be partially redeemed. Thus, we hold that the chancery court correctly found that the original CD was properly redeemed on January 18, 2001, to become effective on January 23, 2001.

**III. WHETHER THE CHANCELLOR NEGLECTED TO APPLY THE "FOUR CORNERS" DOCTRINE TO CERTIFICATE OF DEPOSIT NO. 16314**

¶9. Patrick argues that the chancellor erred in considering the testimony of the bank teller in  

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contemplated by the prohibitions found in the nuncupative will statute.

making its decision because accepting such testimony was in violation of the parol evidence rule. He asserts that the chancellor erroneously relied upon the testimony of the bank teller in deciding that Julia Mae's intent was to create a new CD with proceeds from the old CD. Christine, Heywood and Hancock Bank argue that this Court is precluded from hearing such an argument because Patrick failed to preserve the issue of parol evidence by objecting at trial to the introduction of the teller's testimony.

¶10. The parol evidence rule prohibits the introduction of outside evidence where a document is clear, definite and unambiguous on its face. *In re Will of Roland*, 920 So. 2d 539, 541 (¶11) (Miss. Ct. App. 2006) (citing *Estate of Blount v Papps*, 611 So.2d 862, 867 (1993)). A trial court begins its review with looking first within the "four corners" of the document at issue. If there exists no ambiguity within the writing, then further analysis is proscribed. *In re Will of Roland*, 920 So. 2d at 541 (¶11).

¶11. Our supreme court has held that a party may not raise an objection to the introduction of evidence on the grounds that it is violative of the parol evidence rule for the first time on appeal. *Estate of Parker v. Dorchak*, 673 So. 2d 1379, 1384 (Miss. 1996). However, raising an objection to the admission of parol evidence prior to the judge or jury's decision preserves the issue for appeal. *Id.* Such an objection need not be made contemporaneously, but rather sometime before the judge or jury considers the evidence in order to make its determination. *Id.*

¶12. Prior to this appeal, Patrick never raised an objection to the introduction of the bank teller's testimony. Therefore, this Court is without authority to consider Patrick's argument regarding the introduction of evidence in violation of the parol evidence rule. We find this issue to be without merit.

#### **IV. WHETHER THE CHANCELLOR FAILED TO APPLY MISSISSIPPI CODE ANNOTATED SECTION 81-5-63**

¶13. Patrick asserts that the chancellor “defeated the statutory mandate” of Mississippi Code Annotated section 81-5-63 (Rev. 2001) in finding that Julia Mae was capable of directing the cash proceeds of the old CD to be used to purchase the new CD prior to her death. However, Patrick does not provide any further argument regarding the issue. Mississippi Code Annotated section 81-5-63 provides in pertinent part:

When a deposit has been made or is hereafter made in the name of two (2) or more persons, payable to any one (1) of those persons, or payable to any one (1) of those persons or the survivor, or payable to any one (1) of those persons or to the survivor or survivors, or payable to the persons as joint tenants, the deposit or any part thereof or interest or dividends thereon may be paid to any one (1) of those persons, without liability whether one or more of those persons is living or not, and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. The making of a deposit in that form, or the making of additions thereto, shall create a presumption in any action or proceeding to which either the bank or any survivor is a party of the intention of all the persons named on the deposit to vest title to the deposit and the additions thereto and all interest or dividends thereon in the survivor or survivors.

This section creates a right of survivorship in certain deposits, including certificates of deposit, but also insulates banking institutions with statutory immunity in case a deposit made in the name of two or more persons is withdrawn by one of the named parties. It is undisputed that because the original CD was in the name of “Julie Mae DeJean or Patrick DeJean,” the CD was jointly owned, and either could withdraw the funds. Julia Mae withdrew the funds and acquired a new CD with the proceeds. Hancock Bank cannot be held liable for Julia Mae’s exercise of her right to withdraw the funds. We find the chancellor correctly applied Mississippi Code Annotated section 81-5-63 so as to relieve Hancock Bank from liability.

**V. WHETHER THE CHANCELLOR PROPERLY FAILED TO GRANT AN EQUITABLE DIVISION OF THE CERTIFICATE OF DEPOSIT BASED UPON THE SOURCE OF FUNDING OF THE CERTIFICATE OF DEPOSIT**

¶14. Patrick requests that he be recognized as half-owner of the principal and interest of the new CD because the origination of the funding of the original CD was a family inheritance. The

chancellor refused to redistribute the proceeds from the redemption of the CD, finding that Julia Mae could, at any time, unilaterally order the redemption of the original CD without consulting Patrick. When an account is held jointly in the name of one depositor or another, “each depositor is allowed to treat joint property as if it were entirely his own.” *Drummonds v. Drummonds*, 248 Miss. 25, 31, 156 So. 2d 819, 821 (1963). We find that equitable division of the funds from the CD is not warranted, as the redemption of the original CD was properly executed by one of the lawful joint owners. This issue is without merit.

**VI. WHETHER THERE WAS A SUFFICIENT “ENDORSEMENT” OF CERTIFICATE OF DEPOSIT NO. 16134**

¶15. Patrick argues that the chancellor erred in finding that the original CD did not have to be endorsed before Julia Mae could order the redemption of the proceeds. While Patrick recognizes that the CD was non-negotiable and hence outside of the purview of UCC Article 3, he urges us to find that the CD contained an endorsement requirement. In support of his position, he points out that the CD bore the language that the CD was payable “upon presentation of this certificate properly endorsed.” Patrick argues that because the CD bore an endorsement requirement, and Julia Mae failed to physically appear at Hancock Bank and endorse the CD before redemption, that the CD was improperly redeemed by Hancock Bank. Christine, Heywood and Hancock Bank counter Patrick’s argument, asserting that Hancock Bank could and did waive the endorsement requirement and, alternately, that a bank officer’s notation on the endorsement panel of the CD was tantamount to an endorsement by Julia Mae.

¶16. Endorsements are a requirement for the transfer of a *negotiable* instrument and for proper negotiation under Article 3. Miss. Code Ann. §75-3-201. However, as stated *supra*, Article 3 does not apply to a non-negotiable instrument. Miss. Code Ann. § 75-3-102(a) (Rev. 2000). The chancellor found, and we agree, that Hancock Bank’s endorsement requirement appearing on the

CD at issue was an internal banking requirement designed to protect Hancock Bank. This type of clause appearing on a non-negotiable certificate of deposit is placed for the purpose of mitigating the risk that the issuing bank may make payment to someone not entitled to payment. The clauses are not meant to protect a depositor against withdrawals by a co-depositor and may be waived by the bank. The chancellor held that Hancock Bank waived its own endorsement requirement. No endorsement of the CD was required in order to disburse the proceeds, as the CD was not a negotiable instrument controlled pursuant to Article 3. Therefore, we find this issue to be without merit.

**¶17. THE JUDGMENT OF THE CHANCERY COURT OF JACKSON COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**KING, C.J., LEE, P.J., CHANDLER AND ISHEE, JJ., CONCUR. ROBERTS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY IRVING, GRIFFIS, AND BARNES, JJ. CARLTON, J., NOT PARTICIPATING.**

**ROBERTS, J., DISSENTING:**

¶18. The majority affirms the chancellor's decision to enter a judgment in favor of Christine and Heywood DeJean and Hancock Bank based on the concept that the certificate of deposit at issue was redeemed before Julia Mae's death. In my opinion, the majority applies an incorrect standard of review. Further, with due respect for the majority, I am of the opinion that the chancellor exhibited a fundamental misapplication of the law when she found that Julia Mae redeemed the certificate of deposit before she died. Because I would reverse and render declaratory judgment for Patrick, I respectfully dissent.

¶19. Julia Mae DeJean and Patrick DeJean liquidated their deceased sister's bank stock and placed the funds in a certificate of deposit held by Hancock Bank in Jackson County, Mississippi. They owned the CD jointly and each had rights of survivorship. On January 16, 2001, Julia Mae

executed a power of attorney and named her sister-in-law, Christine DeJean, and Christine's son, Heywood DeJean, as her attorneys in fact.

¶20. The facts are undisputed that on or about January 18, 2001, Julia Mae spoke with Peggy Walker, a customer service representative at Hancock Bank and ordered the old CD redeemed and the proceeds transferred into a new CD. However, during the redemption process, Julia Mae learned that, by delaying issuance of the new CD until January 23, 2001, the old CD would mature and earn additional interest. Further, if Julia Mae redeemed the CD prior to the interest accrual, the CD would lose an unspecified amount of interest. At Julia Mae, Christine, and Heywood's request, Hancock Bank delayed the issuance of the new CD to maximize the interest accrual. However, Hancock Bank stamped the redemption date on the old CD as of January 19, 2001.

¶21. Julia Mae died on January 20, 2001. On January 23, 2001, Hancock Bank issued the new CD in the names of Julia Mae DeJean or Christine DeJean or Heywood DeJean. On February 5, 2001, Christine and Heywood presented the new CD to Hancock Bank. Hancock Bank redeemed the new CD and issued them a check for the balance.

¶22. Though the facts are undisputed, the majority states the standard of review as though this case is a simple factual dispute over whether Julia Mae properly redeemed the old CD when Hancock Bank postdated Julia Mae's redemption. This is not a simple case involving a factual dispute. The relevant foundation question is whether the legal operation of redemption occurred before or after Julia Mae died. As such, the issue is not one of fact, it is an issue of whether the chancellor correctly applied the undisputed facts to a *question of law*. Because this issue involves a question of law – the exact timing of redemption – the appropriate standard of review is not the abuse of discretion standard. The appropriate standard of review, as with all questions of law, is a *de novo* review. *Ladner v. Necaise*, 771 So.2d 353 (¶3) (Miss. 2000).

¶23. First, it is appropriate to consider just who has the right to redeem the CD. The chancellor's

findings of fact and conclusions of law are not specific. At one point the chancellor found that Julia Mae redeemed the CD. At other points the chancellor found that Hancock Bank redeemed the CD. The majority uses passive voice to find that “the chancery court correctly found that the original CD was properly redeemed on January 18, 2001.” Accordingly, the majority opinion is unclear as to who may redeem the CD. In my opinion, as a matter of law, only Hancock Bank could redeem the CD.

¶24. No authoritative and on-point definition of “redemption” in the context of certificates of deposit appears in Mississippi jurisprudence. However, viewing the legal operation of redemption in other contexts, it is clear that only certain parties have rights of redemption. One such context is the Savings Associations Law. Pursuant to the Savings Association Law, only the association may redeem “all or any part of any of its savings accounts.” Miss. Code Ann. § 81-12-153 (Rev. 2001). The term “association” refers to “a savings association or savings and loan association subject to the provisions of this chapter.” Miss. Code Ann. § 81-12-3(a) (Rev. 2001).

¶25. According to the Uniform Commercial Code, “[a] debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.” Miss. Code Ann. § 75-9-623 (Rev. 2002). Section 75-9-623(b) goes on to state that, “To redeem collateral, a person shall tender: (1) Fulfillment of all obligations secured by the collateral then due or past due (excluding any sums that would not be due except for an acceleration provision); and (2) The reasonable expenses and attorney’s fees described in Section 75-9-615(a)(1).”

¶26. A fair uniform definition of redemption would be the “[r]epurchase of notes . . . by paying their value to their holders.” Black’s Law Dictionary 1278 (6th ed. 1991). A certificate of deposit is “an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money.” Miss. Code Ann. § 75-3-104(j) (Rev. 2002). Section 75-3-104(j) goes on to state that “[a] certificate of deposit is a *note of the*

*bank.*” (emphasis added). Applying the previously mentioned uniform definition, redemption, in the context of a CD, occurs when a bank pays the value of the note – the CD – to the depositor.

¶27. As such, Julia Mae had absolutely no legal authority to redeem the CD. As a matter of law, only Hancock Bank could effectuate redemption. Language within the terms of the CD supports this interpretation. According to the endorsed terms of the CD, “This certificate shall be renewed automatically . . . unless *presented for* redemption within ten (10) days after the expiration (maturity) date of the original or any renewal term . . . .” Pursuant to this language, Julia Mae or her representative could only *present* the CD for redemption. That is, Julia Mae could *not* redeem the CD, and neither could her representative.

¶28. Having established just who could redeem the CD, it is now relevant to consider *when* redemption occurred. As stated previously, in the context of a CD, redemption occurs when a bank *pays the value of the CD to the depositor*. There is no dispute that, despite Hancock Bank’s postdating of the CD, Hancock Bank actually paid the value of the CD to Christine and Heywood on January 23, 2001. As such, by operation of law, redemption occurred on January 23, 2001 – after Julia Mae died. Accordingly, the chancellor’s finding that Julia Mae redeemed the CD on January 19, 2001, is a manifestly incorrect conclusion of law for two reasons: (1) as a matter of law, only Hancock Bank, rather than Julia Mae could redeem the CD, and (2) redemption occurred on the date that the bank paid the value of the CD. By operation of law, redemption occurred on January 23, 2001.

¶29. Even if I am erroneous in my analysis that redemption occurred on Tuesday, January 23rd, then the majority’s implied conclusion that redemption was complete on the prior Thursday still does not justify an affirmance of the chancellor. It is undisputed that Hancock Bank paid the old CD by the issuance of the new CD to Julia Mae, Christine and Heywood on Tuesday, January 23rd. It is further undisputed that Julia Mae died on January 20th. If, as implied by the majority opinion,

redemption was complete on Thursday the 18th, then upon Julia Mae's death on Saturday, the proceeds of the old CD became an asset of Julia Mae's estate. Consequently, on the following Tuesday, Hancock Bank was only authorized to pay the proceeds to Julia Mae's estate or to Patrick, the joint owner. This, Hancock Bank did not do. Instead, it issued a new joint CD to Julia Mae, Christine and Heywood. Such an act is in violation of the nuncupative will statute, which prohibits honoring the oral request of a decedent regarding the transfer or disposition of his or her property after death. Miss. Code Ann. § 91-5-15 (Rev. 2004).

¶30. Because Julia Mae died on January 20, 2001, neither Christine nor Heywood had the legal authority under their power's of attorney to present the CD for redemption or to collect the value of the CD. Similarly, Hancock Bank did not have the legal authority to redeem the value of the CD to Christine or Heywood. The CD was listed as a joint account with rights of survivorship. When Julia Mae died, Patrick became the sole owner of the account, and all rights to the value of the CD vested in Patrick. Accordingly, the remainder of the issues on appeal become moot. In my opinion, the majority improperly affirms the chancellor's incorrect conclusion of law under an improper standard of review. Because I would render a declaratory judgment for Patrick, I must respectfully dissent.

**IRVING, GRIFFIS AND BARNES, JJ., JOIN THIS OPINION.**